



The Comptroller General
of the United States

Washington, D.C. 20548

134651

Decision

Matter of: Robert E. Ackerman - Reimbursement of Temporary
Quarters Expenses and Loan Application Fee
Incident to Transfer

File: B-223102

Date: September 25, 1987

DIGEST

1. A transferred employee occupying temporary quarters rented by the month at his new duty station may not be reimbursed a parking fee that is separate from the monthly rent.
2. A transferred employee who rented temporary quarters on a monthly basis should have the total monthly rent prorated to only the days that are counted as part of the temporary quarters period within the monthly rental period. The days that the employee performed temporary duty interrupted the temporary quarters period and are not counted as part of the temporary quarters period.
3. A commercial loan application fee charged an employee for the purchase of a house incident to transfer may be reimbursed under FTR para. 2-6.2(d) as a fee similar to an FHA or VA fee for loan application.

DECISION

The questions presented in this case are whether a transferred employee occupying temporary quarters may be reimbursed a separate parking fee that is not part of the monthly rental for the temporary quarters; whether the monthly rent for the temporary quarters may be prorated to days the employee was performing temporary duty and therefore were not counted as being part of the temporary quarters period; and whether the employee may be reimbursed a commercial loan application fee for the house the employee purchased and moved into following the temporary quarters period.^{1/} We conclude that the separate parking fee may not

^{1/} B. Mathews, Certifying Officer, Internal Revenue Service, Department of the Treasury, submitted this request for a decision.

be reimbursed because it is not a subsistence expense. However, we conclude that the rent should be prorated to only days counted as being included in the temporary quarters period excluding the days the employee was on temporary duty. The loan application fee may be reimbursed because it is similar to the FHA and VA loan application fees that are specifically reimbursable items under the Federal Travel Regulations.

BACKGROUND

The Internal Revenue Service transferred Mr. Robert E. Ackerman, its employee, from Washington, D.C., to Cleveland, Ohio, with a reporting date of April 1, 1985, and authorized a 60-day period for the occupation of temporary quarters and an extension of that period for nearly a month. Mr. Ackerman rented an apartment for his temporary quarters for himself at his new duty station in Cleveland beginning March 31, 1985. His lease was for \$500 a month, with a partial month to be prorated, and contained no provision mentioning parking fees or privileges. Mr. Ackerman states that the apartment complex allowed tenants to arrange their own off-street parking, if needed, or would rent apartment parking space to tenants for \$10 a month. He also states that the complex gave those tenants renting apartment parking space the choice of having the fee included in the lease or being billed separately for it. Mr. Ackerman chose to be billed separately.

During the temporary quarters period, Mr. Ackerman claims to have performed temporary duty for 4 days--April 16, May 9 and 10, and June 3. He did not include expenses for these 4 days on his voucher for temporary quarters expenses. After moving out of the temporary quarters, Mr. Ackerman purchased a house at his new duty station with a commercial loan. Although the Service reimbursed most of the real estate transaction expenses, it did not reimburse a loan application fee.

TEMPORARY QUARTERS

The Internal Revenue Service authorized a 60-day period and an extension of nearly a month for temporary quarters. For almost all of this period the lodgings expense consisted of the rental of an apartment for \$500 per month and a carry-over of \$221 for a partial month. Mr. Ackerman spent the remainder of the partial month's extension period in a motel or apparently staying with friends. Mr. Ackerman and the Service disagree on how the rental expenses for the apartment should be prorated so as to produce a daily rental rate for the days he rented the apartment. The Service simply divided the monthly rental expense by the number of

days in the month or partial month to come up with the daily rate. Mr. Ackerman divided the monthly rental expense by the days of the monthly rental period for which he claimed temporary quarters expenses, excluding the days on which he performed temporary duty. We agree with Mr. Ackerman.

The Internal Revenue Service does not dispute that Mr. Ackerman spent at least 3 days of the temporary quarters period on temporary duty in a per diem status. There apparently is some question about whether Mr. Ackerman was on temporary duty on May 10, 1985. The computation for days of temporary quarters expenses does not run during the period that an employee is on temporary duty away from the temporary quarters and in a per diem status. The temporary quarters period is extended for the same number of days that the employee is on temporary duty. James E. Massey, B-207123, December 14, 1982; 47 Comp. Gen. 322 (1967). Therefore, if the Internal Revenue Service's method of determining a daily rate is used--dividing the monthly expense by all the days in the month or partial month--those days that are omitted from the temporary quarters period but included in the rental period would not be reimbursed to Mr. Ackerman; the measure of the apartment's rental expenses not reimbursed would be those days of temporary duty multiplied by the Service's daily rental rate.

When an employee is traveling on temporary duty and his lodging expense has properly been arranged as a monthly apartment rental to keep the lodging expense below the area's normal motel or hotel rate, the proration of rental expense to the number of days in the rental period is inappropriate where the employee cannot claim those days of the rental period on his reimbursement voucher. The correct proration is only to the days that can be claimed on the reimbursed voucher. Jesus Soto, Jr., 62 Comp. Gen. 63 (1982); Robert L. Davis, B-188346, August 9, 1977. The same proration principle should be applied to lodgings expense for temporary quarters. Therefore, the apartment's rental expense should be prorated to those days of the month for which Mr. Ackerman claims temporary quarters expenses, which would exclude the days he was on temporary duty.

In this case that proration principle may result in a slightly different daily rate than Mr. Ackerman claims because the regulations concerning temporary quarters expenses require those expenses to be computed for each 30-day period (Federal Travel Regulations, para. 2-5.4c, FPMR 101-7 (Supp. 10, November 14, 1983), incorp. by ref., 41 C.F.R. § 101-7.003 (1985)), and because the monthly

rental periods began before Mr. Ackerman began claiming temporary quarters expenses and do not coincide with the 30-day temporary quarters periods.

In order to determine the correct daily rate, the first monthly rental expense of \$500 should be allocated to those days of the first 30-day temporary quarters period which ran through the end of the first monthly rental period. The first temporary quarters period began April 1, 1985, and ran through May 1, 1985, because the day Mr. Ackerman was on temporary duty, April 16, 1985, is excluded from the period and the period extended for that day, as discussed above. Since the first monthly rental period extended only through April 30, the daily rate for those 29 days of the first 30-day temporary quarters period should be \$500 divided by 29, or \$17.24. The daily rate for the second monthly rental expense of \$500 should be similarly determined. \$500 would be allocated to the remaining day of the first 30-day temporary quarters period and those days of the second 30-day period which ran through the end of the second monthly rental period.^{2/} The third partial monthly expense of \$221 should be allocated to the remaining days of the second 30-day period and those days of the extension period through June 13, Mr. Ackerman's last day in the apartment.

The second question concerning Mr. Ackerman's expenses for temporary quarters is whether the separate monthly charges the apartment complex assessed for parking may be reimbursed. Mr. Ackerman relies on para. 554(1) of the Service's Travel Handbook which allows reimbursement for "* * * actual subsistence expenses that are directly related to the occupancy of the temporary quarters * * *."

Reimbursable "subsistence expenses" during occupancy of temporary quarters include only:

"* * * charges for meals (including groceries consumed during occupancy of temporary quarters), lodging, fees and tips incident to meals and lodging, laundry, and cleaning and pressing of clothing. Expenses of local transportation

^{2/} The Service should make a determination whether in fact Mr. Ackerman was on temporary duty on May 10. If there is insufficient evidence to support his claim of temporary duty on May 10, the number of days to be excluded from the second 30-day period, as well as the number of days to be allocated to the second rental period would be affected. That would obviously affect the daily rate.

incurred for any purpose during occupancy of temporary quarters shall not be allowed." FTR, para. 2-5.4a. (Supp. 10, November 14, 1983).

Our decisions under prior FTR's with a nearly identical definition of "subsistence expense," have concluded that a separate garage or parking fee is not a "subsistence expense." 47 Comp. Gen. 189 (1967); Accord, B-178343, December 26, 1973. In those cases the separate parking fee was found to be similar to a transportation expense. Neither the statutory standard nor implementing regulatory definitions used in those decisions have been significantly changed; therefore, a separate parking or garage charge is still not considered to be a subsistence expense. The charges may not be reimbursed. The Service's Travel Handbook does not help Mr. Ackerman because it only authorizes reimbursement of subsistence expenses.

Loan Application Fee

Mr. Ackerman moved into a house that he purchased with a conventional mortgage loan after his temporary quarters period had concluded. A copy of the settlement statement produced at settlement of the real estate transaction is included in the record, which described a \$150 charge from the lender as an "application fee." The Service denied reimbursement of the application fee because it was not associated with a FHA or VA loan. The Service also noted that Mr. Ackerman had not furnished a copy of his Truth in Lending Statement, which would have indicated whether the application fee was part of the finance charge under Regulation Z, 12 C.F.R. § 226.4(a) (1985), which would not have been reimbursable under FTR, para. 2-6.2d(2)(e) (Supp. 4, October 1, 1982).

Loan application fees are excluded from the definition of a finance charge under Regulation Z provided they are charged by the lender to all applicants without regard to whether credit actually is extended. 12 C.F.R. § 226.4(c)(1). Therefore, unless the Service has some basis for believing that the \$150 item shown on the settlement sheet does not represent an application fee that is excluded from a finance charge, Mr. Ackerman need not furnish his Truth in Lending Statement. And since FTR, para. 2-6.2d(1)(f) (Supp. 4, October 1, 1982), specifically includes as a reimbursable item " * * * other fees and charges similar in nature * * *" to FHA or VA loan application fees, a commercial loan application fee may be reimbursed. William T. Bigby, B-221162, June 10, 1986.

Accordingly, Mr. Ackerman may be reimbursed his loan application fee and his lodgings expense in the manner described. He may not be reimbursed the separate charges for parking or garaging his automobile.

for *Harry R. Van Cleave*
Comptroller General
of the United States